IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 11TH MAY 2007 / 21ST VAISAKHA 1929

OP.No. 9462 of 1999(B)

PETITIONER:

PALAKKAD DISTRICT CO- OPERATIVE BANK EMPLOYEES CO-OPERATIVE CREDIT SOEICTY LTD., P. 530, PALAKKAD , REP.BY ITS PRESIDENT.

BY ADV. SRI.P.F.THOMAS (SR.)
SRI.JENSON MENDEZ
SRI.SUNIL THOMAS

RESPONDENTS:
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1. **M.NARAYANAN, S/O. K.M. RAMANKUTTY MARAR, MARATH HOUSE, 29/584, KOZHIPARAMBU, VADAKKANTHARA P.O., PALAKKAD 12.**

2. **THE LABOUR COURT, KOZHIKODE.**

3. **STATE OF KERALA, REP.BY THE CHIEF SECRTARY, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

BY ADV. SRI.T.KRISHNAN UNNI - R1
BY GOVERNMENT PLEADER SRI.K.J.MUHAMMED ANZAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/05/2007, ALONG WITH OP NO. 9700 OF 1999 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.9462/1999

ORDER ON CMP. NO.15662/1999 IN OP. NO.9462/1999

DISMISSED

11.05.2007 **SD/- PIUS C.KURIAKOSE, JUDGE**

APPENDIX

PETITIONERS EXHIBITS

EXT.P1:- COPY OF THE ORDER OF THE JOINT REGISTRAR OF THE CO-OPERATIVE SOCIETY, DT. 3.5.89.

EXT.P2:- COPY OF THE ORDER OR REFERENCE DT. 30.3.92.

EXT.P3:- CLARIFICATION STATEMENT OF THE IST RESPONDENT I ID 17/1993, DT. 9.2.93.

EXT.P4:- WRITTEN STATEMENT OF THE MANAGEMENT DT. 17.3.93.

EXT.P5:- MODIFICATION OF THE ISSUE ORDERED BY THE 3RD RESPONDENT DT. 15.7.93.

EXT.P6:- ADDITIONAL WRITTEN STATEMENT OF THE MANAGEMENT DT. 28.10.93.

EXT.P7:- AWARD OF THE 2ND RESPONDENT PUBLISHED IN KERALA GAZETTE NO.8, DT. 24.2.98.

/TRUE COPY/

P.A. TO JUDGE

ss

PIUS C. KURIAKOSE, J.

O.P. Nos. 9462 & 9700 OF 1999

Dated this the 11th day of May, 2007

JUDGMENT

The Palakkad District Co-operative Bank Employees Co-operative Credit Society is aggrieved by the award passed by the 2nd respondent-Labour Court, Kozhikode. OP No.9462 of 1999 seeks quashment of award in ID No.17 of 1993 which is in favour of Sri.M.Narayanan, the 1st respondent in that case who was appointed as a Junior Clerk in the Bank as per appointment order dt.1.1.1988. OP No. 9700 of 1999 seeks quashment of the award of the 2nd respondent Labour Court in ID No.24 of 1993 which is in favour of Sri.Krishnakumar the 1st respondent in that case who was appointed on 10.01.1988 in the service of the Society as a Peon. The 3rd respondent in both the cases is the State.

2. The petitioner Society submits that they are a Credit Society constituted for the employees of the Palakkad District Co-operative Bank and that their membership strength is 250. The Society was placed under Clause II under Section 80 and Rule 182 Appendix iii with effect from 01.07.1985 by order of the Joint Registrar and it was pursuant to such classification and staff pattern fixed that the party respondents in the Original Petitions were appointed respectively as Junior Clerk and Peon. It is averred that the General Body of the Society held on 20.11.88

discussed in detail about the draft budget and the general body did not approve the budget mainly on the ground that there is excessive staff and that the expenses for their remuneration is unaffordable for the Society. Though the party respondents in the Original Petitions were appointed after conducting written test and interview the general body did not approve the proposals of the Board of Directors and in implementation of the decision of the general body the services of the party respondents were terminated by notice dt.21.11.88 and order issued by the President of the Society. In the notice it was stated that all legal entitlements on termination of his services could be collected from the office of the Society. The legal entitlements for both the party respondents were only one month's notice pay and retrenchment compensation calculated at the rate of 15 days wages, since both of them had more than 6 months continuous service. The party respondents were not prepared to receive the very legal entitlements. The party respondents instituted OP No.9737 of 1988 before this Court. This Court disposed of that Original Petition directing the Joint Registrar to dispose of the representation in accordance with law and after hearing parties. The Joint Registrar who had earlier disposed of the representations without hearing the parties refused to entertain the representation on the ground that he has no jurisdiction to decide the service conditions of the employees. The party respondents therefore jointly filed fresh OP No.2374 of 1989 seeking appropriate reliefs. The

Joint Registrar was again directed to dispose of the matter after affording hearing opportunity to the Society and the party respondents. The Joint Registrar dismissed the representation by Ext.P1 order dt.03.05.89 holding that no ground was made out for rescinding the resolution of the Society in exercise of the powers under Rule 176 of the Kerala Co-operative Societies Rules. Both the respondents subsequently raised an Industrial Dispute over the issue of termination of their services which was referred for adjudication by the Government in exercise of its powers under Section 10(1) (c) of the Industrial Disputes Act to the Ernakulam Labour Court. It was later transferred to the 2nd respondent Labour Court. The references were taken over and registered as ID Nos.17 of 1993 and 24 of 1993 respectively. The 1st respondent (Sri.Krishna Kumar) in OP No. 9700 of 1999 filed claim statement in the reference relating to him. Ext.P2 in that case is copy of that claim statement. The petitioner Society filed written statement on 14.09.93 in that ID and Ext.P3 is copy of that written statement. Ext.P2 in OP No.9462 of 1999 is copy of the order of reference by the Government. In that reference, the issue is “denial of employment” to the 1st respondent in OP No.9462 of 1999 to the Labour Court. In ID No.17 of 1993 the 1st respondent, Sri.Narayanan, filed Ext.P3 claim statement and the petitioner Society filed Ext.P4 written statement. Later in both the cases the Government by another order modified the issue referred for adjudication, to “retrenchment”. The petitioner submits that the

modification was ordered by the Government pursuant to the objections filed by the party respondents. Petitioner was not heard in the matter and it is contended that the modification ordered was without authority of law. In ID No.24 of 1993 the petitioner-Society filed Ext.P4 additional written statement produced as Ext.P4 in OP No.9700 of 1999 and in ID No.17 of 1993 the petitioner filed additional written statement produced as Ext.P6 in OP No.9462 of 1999.

3. Before the Labour Court the employees got themselves examined as WW1. Sri.M. Narayanan marked six documents-W1 to W6 while Sri.Krishnakumar marked three documents-W1 to W3. On behalf of the Society the President was examined as MW1. In ID No.24 of 1993 documents M1 to M3 were marked while in ID No.17 of 1993 documents M1 to M4 were marked. Ext.P7 in OP No.9462 of 1999 is copy of the award passed in ID No.17 of 1993 and Ext.P5 in OP No.9700 of 1999 is copy of the award in ID No.24 of 1993. In ID No.17 of 1993 the 2nd respondent-Labour Court ordered reinstatement of Sri.Narayanan without back wages finding that the termination of Sri.Narayanan was malafide and in violation of the mandate contained in Section 25(f) of the Industrial Disputes Act. The Labour Court also found that the final condition of the petitioner Society did not warrant termination of services of Sri.Narayanan. The Society was directed to pay a sum of Rs.10,000/- as compensation for illegal termination of services. Similarly, in ID No.24 of 1993 also the

Tribunal directed reinstatement of Sri.Krishna Kumar without back wages after finding that the termination of Mr.Krishna Kumar is malafide and in violation of mandate contained in Section 25(f) and that the financial condition of the Society did not warrant termination of the service of Sri.Krishna Kumar. In that case also under the Society was directed to pay a sum of Rs.10,000/- as compensation for the illegal termination of the services. Impugning the respective awards on various grounds in the Original Petitions the Society pray that the original order of reference, the subsequent order modifying the reference and the awards be quashed. The alternative prayers in both the cases is that if the termination of the employees is found violative of the mandates contained under Section 25(f) directing payment of compensation only to the employees taking into consideration the duration of his service without ordering reinstatement and compensation.

4. The 3rd respondent Government has filed a counter affidavit in OP No.9700 of 1999. It is contended therein that the contention of the petitioner that modification of the issued referred as “retrenchment” is without authority of law is correct. According to the definition of the term retrenchment contained in the statute, termination of service of workmen for any reason whatsoever otherwise than as punishment inflicted by way of disciplinary action and those specifically excluded under sub Clauses (a), (b), (bb) and (c) shall amount to retrenchment. The termination of the

service of the 1st respondent was neither based on disciplinary action nor such termination come under any disciplinary action nor such termination comes under relative Sub Clauses perfectly in order. The counter affidavit proceeds to deny the explanation offered by the petitioner for not challenging the award in time. Referring to Section 17 of the ID Act, 1947 it is contended that the publication of the award in the official Gazette is conclusive proof that the award has been published and therefore the argument of the petitioner that he came to know about the award only recently is not sustainable.

5. Sri.P.F.Thomas, Senior Counsel addressed me on behalf of the petitioner Society in both the cases, while Sri.T. Krishnanunni, Advocate addressed me on behalf of party respondents. I have heard the submissions of the learned Government Pleader also. Addressing me on the basis of the various grounds raised in the Writ Petition, Mr.P.F. Thomas, Senior Counsel drew my attention to the various documents placed on record and also to Section 211 of the Industrial Disputes Act; Section 25 of the same Act; Rule 176 and 184 of the Cor-operative Societies Rules. The learned counsel would rely on the judgment of the Division Bench of this Court in **Dr.Padiyar Memorial Homoeo College v. State of Kerala and others** (2006 (1) ILR 755) and also to that in **Abdul Rahiman Kunju v. State of Kerala & others** (1998 (2) Labour Law Journal 908).

6. Mr.Krishnanunni per contra would refer to the pleadings and documents available on record and invited my attention to Section 25 H of the Industrial Disputes Act. Mr.Unni would endavour to meet the submissions of Mr.Thomas on the authority of the judgment of the Supreme Court in State of Punjab v. Sukhwinder Singh, 2005 (5) SCC 569; Management of K.S.R.T.C. Bangalore v. M.Boraiah, AIR 1983 Kerala 1320 and also to the judgment of the Supreme Court in Syed Azam Hussaini v. Andhra Bank Ltd. AIR 1995 SC 1352, apart from referring to the judgment of the Supreme Court in G.M.Haryana Roadways v. Rudhan Singh, 2005 (5) SCC 591.

7. I have considered the rival submissions addressed at the Bar in the light of the ratio emerging from the various decisions cited before me. I have also considered the various documents placed on record particularly, the award passed by the Labour Court. Even though I am not much impressed by the arguments of the learned counsel for the petitioner that the Government erred in modifying the issue referred for adjudication and that such modification being beyond the powers of the Government the award itself is vitiated. I am of the view that the Labour Court was not justified in directing reinstatement of the party respondent. The order of termination was justified and the Labour Court should have noticed that in the order of termination itself the employees were informed about their legal entitlement and compensation and notice pay offered to them the management cannot be faulted for the failure of the respondents to receive

the compensation and notice pay offered. It is seen that the Labour Court itself does not question about the bonafides of the action of the manager. But the conclusions are that the failure on the part of the management was technical order of reinstatement in my opinion was therefore not at all justified.

8. Both these writ petitions therefore will stand disposed of issuing the following directions and orders.

9. The awards of the Labour Court directing reinstatement of the party respondents are set aside. Party respondent in O.P. No.9462 of 1999 will receive a sum of Rs.13,728/- in lieu of compensation and backwages and the party respondent in O.P. No. 9700 of 1999 will receive a sum of Rs.10,000/- already ordered by the Labour Court in lieu of not only backwages but also retrenchment compensation. It is however made clear that both the party respondents will have claim for reappointment in the petitioner society if and when vacancies arise in future.

(PIUS C.KURIAKOSE, JUDGE)

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